IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1516 OF 2006

Shri Dinesh Janardhan Mhatre,)
Age 29 years, Occupation Service,)
Resident of Jaskhar,)
Post & Taluka Uran,)
District Raigad.) ...Petitioners

Versus

1. Shri Hanuman Bhudha Koli,)
   Age 50 years, At Ekvira,)
   Bunglow Shastri Nagar,)
   Khopoli.)

2. Shri Anant Ramchandra Kedari,)
   Age 48 years, Residing at)
   Saymal, Khopoli, Dist.Raigad.)

3. Shri Amit Anant Kedari,)
   Age 28 years, Residing at)
   Saymal, Khopoli, Dist.Raigad.)

4. The Assistant Police Inspector,)
   Khopoli Police Station at)
   Khopoli, District Raigad.)

5. The Special Executive Magistrate,)
   at Alibag, District Raigad.)

6. The State of Maharashtra.) ...Respondents

Shri S.M. Oak for the Petitioner.

Shri Rajesh More, A.P.P for the State.

WITH
CRIMINAL APPLICATION NO.3164 OF 2006

Suppu Kandaswamy Devendra,)
Aged 45 years, Residing at Nehru)
Nagar No.2, Near Panchavati Bakery,)
Makkawadi, Antop Hill,)
Mumbai 400 037.) ...Applicant

Versus

The State of Maharshtra) ...Respondent

Shri S.K. Keswani for the Applicant.

Shri Rajesh More, A.P.P for the Respondent.

CORAM : ABHAY S. OKA, J.

DATE : OCTOBER 20, 2006.

JUDGMENT:

1. In these two Petitions the challenge is to the proceedings under Chapter VIII of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code of 1973). These Petitions can be conveniently disposed of by a common judgment. In Criminal Writ Petition No.1516 of 2006 the challenge is to communication dated 19th June, 2006 issued by the Assistant Inspector of Police, Khopoli Police Station to the Special Executive Magistrate, Alibag. In the said communication it is stated that the Petitioner had demanded a ransom of Rs.25,00,000/- from one Hanuman Budhaji Koli. The said communication records that the Petitioner has obtained anticipatory bail from this court in connection with the said offence. The said communication records that there is apprehension that the Petitioner is likely to commit similar offences and therefore, he should be proceeded against under section 110(e)(g) of the said Code of

1973 and final bond should be taken from him. It further records that the Petitioner has been arrested in exercise of powers under sub-section 2 of section 41 of the said Code of 1973. By the said communication, a prayer was also made for directing the Petitioner to execute interim bond under sub-section 3 of section 116 of the said Code of 1973. The grievance of the Petitioner in the said Petition is that without issuing show-cause notice to the Petitioner, on the basis of the aforesaid communication inquiry was initiated under section 110 of the said Code of 1973 and the Petitioner was directed to execute a bond. A submission is made that mandatory provision of section 111 of the said Code of 1973 is not complied with and therefore, the entire proceedings under Chapter VIII of the said Code of 1973 are vitiated.

2. An affidavit in reply was filed by the Assistant Inspector of Police attached to Khopoli Police Station, District Raigad. In the said affidavit it is stated that after the arrest of the Petitioner under section 41(2) of the said Code of 1973, he was produced before the Special Executive Magistrate at Alibag within four hours from arrest. The file of the proceedings has been produced by the

learned A.P.P for my perusal.

3. In Criminal Application No.3164 of 2006, the challenge is to the notice dated 31st March, 2006 issued by the Special Executive Magistrate under section 111 of the said Code of 1973. It is submitted that notice has been based on an offence registered against the Applicant in which the Applicant has been acquitted by this Court. It is submitted that if the said offence is ignored, the notice has been issued only on the basis of commission of an alleged non-cognizable offence. It is submitted that the entire proceedings are bad in law. In the said case also file of the proceedings is placed before me.

4. I have considered the submissions made by the learned Advocates appearing for the parties.

5. In Criminal Writ Petition No.1516 of 2006 the file of the proceeding shows there is no specific order passed under section 111 of the said Code of 1973. Section 111 of the said Code of 1973 reads thus:

> "**111. Order to be made.**-When a Magistrate acting under section 107, section 108, section

> 109 or section 110, deems it necessary to require any person to show cause under such section he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required."

6. An order made under section 111 of the said Code of 1973 is a condition precedent for initiation of further proceedings. It appears that a show-cause notice under section 111 was served on the Petitioner on 19th June, 2006 when he was produced before the Special Executive Magistrate. On the same day a statement of the petitioner was recorded. In the statement it is stated that the Petitioner has been read over and explained the contents of the show-cause notice under section 111 of the said Code of 1973. It is recorded that the Petitioner had nothing to say about the said notice. On 19th June, 2006 itself a direction was issued by the learned Special Executive Magistrate directing the Petitioner to execute an interim bond as required by sub-section 3 of section 116 of the said Code of 1973. However, no specific reasons are recorded in writing as to why such interim

direction was given. The mandate of law is that direction for execution of interim bond can be given only for reasons recorded in the order.

7. As there is no order made under section 111 of the said Code of 1973, the further proceedings under Chapter VIII are obviously illegal. Even the order directing execution of interim bond is illegal as no reasons are set out for passing the said order. Therefore, the Petition must succeed.

8. So far as Criminal Application No.3164 of 2006 is concerned, perusal of the file shows that there is no specific order passed under section 111 of the said Code of 1973. The roznama of the proceeding records that on 31st March, 2006 the Applicant was explained the contents of show-cause notice under section 111 of the said Code of 1973. On first three or four dates time was granted by the learned Special Executive Magistrate to the Applicant. On 08th May, 2006 an order is recorded in roznama that the Applicant has been warned to keep surety present on the next date. Similar order is found in roznama of 14th August, 2006 and 21st August, 2006. Under section 116(1) provides that after making compliance with sections 111 and 112 of the said Code of 1973 the Magistrate must proceed

to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary. Sub-section 2 of section 116 provides that such inquiry shall be made, as nearly as may be practicable, in the manner prescribed by the said Code of 1973 for conducting trial and recording evidence in summons cases. Section 117 provides that if, upon such inquiry it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly. Perusal of the file shows that there is no indication that any such inquiry as contemplated by section 116 is held by the learned Special Executive Magistrate. The Roznama shows that the order of keeping the surety present is passed without holding an inquiry as aforesaid. There is no reasoned order passed as to why the Petitioner should produce surety. Thus, the learned Magistrate has already formed an opinion that the Petitioner needs to execute a bond. This amounts to pre judging the issue even before holding an inquiry as contemplated by law. Therefore, the proceedings are vitiated.

9. The show-cause notice refers to a non-cognizable offence registered against the Applicant on 09th February, 2006 on the basis of a private dispute between the Applicant and the witness as regards use of open land. The notice also records that the Applicant was arrested under section 151(1) of the said Code of 1973. The notice refers to another offence bearing C.R.No.17 of 1996 under sections 141 to 149 and 302 of the Indian Penal Code. It appears that for the said offence the Applicant was convicted by the Sessions Court. However, by Judgment and Order dated 11th August, 2004 passed by a Division Bench of this court in Criminal Appeal No.444 of 1999, the Applicant has been acquitted of the said offence. There is no reference in the show cause notice to the fact that an order of acquittal has been passed in the said case in favour of the Applicant.

10. In any event, the proceedings under Chapter VIII are vitiated as there was no order made under section 111 of the said Code of 1973. Moreover, without holding any inquiry the learned Special Executive Magistrate has directed the Applicant to keep surety present. Therefore, the Petition must succeed.

11. Hence, I pass the following order:

CRIMINAL WRIT PETITION NO.1516 OF 2006

. The proceedings of Chapter Case No.64 of 2006 are quashed. Therefore, order dated 19th June, 2006 directing the Petitioner to furnish interim bond stands set aside.

CRIMINAL APPLICATION NO.3164 OF 2006

. The proceedings of Chapter Case No.33 of 2006 are quashed and set aside.

JUDGE